

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
May 3, 2005
6:30 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL (6:30 p.m.)

II. ADJOURN TO CLOSED SESSION

**Conference with Real Property Negotiator Pursuant to Government Code Section 54956.8
Property: APN No. 086-12-010. Triangular Shaped Parcel at the Southeast Corner of
Great Mall Parkway and S. Abel Street. Negotiating Party: Milpitas Redevelopment
Agency and County of Santa Clara. Under Negotiation: Terms and Conditions for
Acquisition of Property**

**III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if
required pursuant to Government Code Section 54957.1, including the vote on abstention
of each member present**

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES (April 19, 2005)

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Proclamations

- Building Safety Week
- Bike to Work Month
- May 2005 Stroke Awareness Month
- VFW Buddy Poppy Month
- Eye Glass Recycling Month
- Older Americans Month

Commendations

- Volunteer Income Tax Assistance Volunteers (VITA) Recognition

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. ANNOUNCEMENT OF CONFLICT OF INTEREST

XI. MOMENTS OF REFLECTION

XII. APPROVAL OF AGENDA

XIII. CONSENT CALENDAR (Items with Asterisks)

XIV. PUBLIC HEARINGS

1. Introduce Ordinance Nos. 120.43 and 208.40, Amendments to Title VIII of the Milpitas Municipal Code for 2005/06 and 2006/07 Water, Recycled Water, and Sewer Rate Adjustments (Staff Contact: Darryl Wong, 586-3345)
2. Approve Entertainment Event Permit for a Carnival Sponsored by the Milpitas Rotary Mervyn's Parking Lot at the Milpitas Town Center: May 12-15, 2005 (Staff Contact: Donna Biles, 586-3003)

XV. UNFINISHED BUSINESS

3. Review and Approve Ethics Project Final Report, Recommendations and Activities for 2005 and 2006 (Staff Contact: Tambri Heyden, 586-3280)
4. Introduce Ordinance No. 54.24 Amending Section 5.05 of Chapter 20 of Title I and Section 13.08 of Chapter 210 of Title V of the Milpitas Municipal Code to provide that notices of appeal to the City Council shall only be effective upon timely receipt of payment of the fee adopted or amended by resolution of the City Council and to provide for appeals of the Animal Regulation Administrator's decisions to be heard by the City Council. (Staff contact: Tambri Heyden, 586-3280 and Peter Spoerl, 586-3040)
5. Support BART At-Grade Option at Dixon Landing Road (Dixon Under BART and the Railroad): BART Extension to San Jose, Project No. 8164 (Staff Contact: Greg Armendariz, 586-3317)

XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes (April 19, 2005)

RA4. Approval of Agenda and Consent Calendar

RA5. Receive Progress Report on Library Design (Project No. 8162) (Staff Contact: Mark Rogge 586-3403)

RA6 City of Milpitas Financial Status Report For The Nine Months Ended March 31, 2005 (Staff Contact: Emma Karlen, 586-3145)

***RA7. City of Milpitas Investment Portfolio Status Report for the Quarter Ended March 31, 2005 (Staff Contact: Emma Karlen, 586-3145)**

RA8. Agency Adjournment

XVII. REPORTS OF OFFICERS AND BOARDS

Community Advisory Commission

6. **Receive Community Advisory Commission (CAC) Report on Having Non-Denominational Invocations At City Council Meetings (Staff Contact: Dennis Carrington, 586-3275)**

XVIII. NEW BUSINESS

7. **Actuarial Valuation Report of the City's Postretirement Medical and Dental Benefits Plans (Staff Contact: Emma Karlen, 586-3145)**
- *8. **Approve Letter of Support for AB 1590 Regarding Property Tax Revenue Allocations for Special Districts (Staff Contact: Darryl Wong, 586-3345)**
- *9. **Approve a Budget Appropriation: Minor Traffic Projects, Project No. 4024 (Staff Contact: Jaime O. Rodriguez, 586-3335)**

XIX. ORDINANCES (None)

XX. RESOLUTIONS

- *10. **Adopt Resolution Granting Initial Acceptance: Project Hillside Water System Improvement Project, Project No. 7083, (Staff Contact Greg Armendariz, 586-3317)**
- *11. **Adopt Resolution Authorizing Staff to Submit a Grant Proposal to the TDA Article 3 – Bicycle and Pedestrian Grant Program for the Installation of ADA Ramps at Various School Locations (Staff Contact: Jaime O. Rodriguez, 586-3335)**

XXI. BIDS AND CONTRACTS

- *12. **Award Bid to East Bay Motorsports for Purchase of a Honda ST1300P Police Motorcycle (Staff Contact: Chris Schroeder, 586-3161)**
- *13. **Approve Agreement With Operator Certification Training, Inc. For Advanced Water Supply Certification Training (Staff Contact: Stephan Smith, 586-2640)**
- *14. **Approve Plans and Specifications and Authorize the Advertisement for Bids: Berryessa Pump Station, Project No. 8138 (Staff Contact: Doug De Vries, 586-3313)**

XXII. CLAIMS AND DEMANDS

- *15. **Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Chris Schroeder, 586-3161)**

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MAY 17, 2005, AT 7:00 P.M.**

B E C O M E A C I T Y C O M M I S S I O N E R !

Currently, there are openings on the following City Commissions:

- ▶ Arts Commission
- ▶ Bicycle Transportation Advisory Commission
- ▶ Citizens Emergency Preparedness Advisory Commission
- ▶ Community Advisory Commission
- ▶ Economic Development Commission
- ▶ Mobile Home Rental Review Board
- ▶ Open Government Commission
- ▶ Parks, Recreation, and Cultural Resources Commission
- ▶ Recycling and Source Reduction Advisory Commission
- ▶ Youth Advisory Commission

Applications are available online at www.ci.milpitas.ca.gov or in the Agenda rack outside the Council Chambers. Contact the City Clerk's Office (586-3002) for information.

CITY OF MILPITAS
Agenda Reports
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XIV. PUBLIC HEARINGS

1. **Introduce Ordinance Nos. 120.43 and 208.40, Amendments to Title VIII of the Milpitas Municipal Code for 2005/06 and 2006/07 Water, Recycled Water, and Sewer Rate Adjustments (Staff Contact: Darryl Wong, 586-3345)**

Background: Water, recycled water and sewer rate adjustments have been prepared by staff. The recommended 2005/06 and 2006/07 Utility Rates meet the Utility Financial Master Plan City revenue requirements for services that was adopted by Council. The recommendations have been presented to the Utility Rate Sub-Committee.

Proposed changes are as follows:

Water Rates: Increases are needed due to increased operating cost and infrastructure replacement cost, and are consistent with the Utility Financial Master Plan. For a typical single family resident, water cost will increase bimonthly (every two months) from \$58.40 to \$63.26 in 05/06, and from \$63.26 to \$67.44 in 06/07. Similar increases will occur for other water and recycled water user categories as shown in the table below.

Proposed 2005/06 and 2006/07 Water Rates
(FY 2005/06 - For meters read on or after July 18, 2005)
(FY 2006/07 - For meters read on or after July 24, 2006)

Water and Recycled Water Quantity Charges	Current per hundred cubic feet	Proposed 2005/2006 per hundred cubic feet	Proposed 2006/2007 per hundred cubic feet
Residential 0-20 hcf	\$1.29	\$1.40	\$1.49
> 20 hcf	\$2.71	\$2.93	\$3.13
Commercial, Industrial, and Institutional	\$2.95	\$3.19	\$3.40
Recycled Industrial Process	\$1.48	\$1.60	\$1.70
Recycled Dual-Plumb	\$1.48	\$1.60	\$1.70
Potable City	\$1.15	\$1.10	\$1.12
Potable irrigation all others	\$3.37	\$3.65	\$3.89
Recycled irrig formerly wells	\$0.63	\$0.68	\$0.68
Recycled agric	\$0.27	\$0.32	\$0.32
Recycled irrig city	\$0.55	\$0.55	\$0.61
Recycled irrig all others	\$2.70	\$2.92	\$3.11
Santa Clara County (Ed Levin Park)	\$1.16	\$1.02	\$1.02
Bimonthly Fixed charges; typical increase for all other sizes (not shown)			
Residential 5/8 inch meter	\$16.34	\$17.68	\$18.86

Non-residential ¾ inch meter	\$18.33	\$19.83	\$21.16
Residential Fire Service 2"	\$26.13	\$28.27	\$30.16
Non-Residential Fire Service 2"	\$27.63	\$29.90	\$31.90

Sewer Rates: Increases are needed to fund wastewater Treatment Plant costs and infrastructure replacement costs, consistent with the Utility Financial Master Plan. For a typical single family resident, sewer use cost will increase bimonthly from \$50.25 to \$54.77 in 05/06 and from \$54.77 to \$59.70 in 06/07. In accordance with Federal Environmental Protection Agency requirements, other user categories are adjusted based upon sewage discharge strength, as shown in the table below.

Proposed 2005/06 and 2006/07 Sewer Rates
(FY 2005/06 - For meters read on or after July 18, 2005)
(FY 2006/07 - For meters read on or after July 24, 2006)

Sewer Quantity Charges	Current per hundred cubic feet	Proposed 2005/2006 per hundred cubic feet	Proposed 2006/2007 per hundred cubic feet
Single Family bimonthly per dwelling unit	\$50.25	\$54.77	\$59.70
Multi-Family bimonthly per dwelling unit	\$36.48	\$39.49	\$43.14
Mobile Home bimonthly per dwelling unit	\$22.76	\$24.57	\$26.88
Commercial categories per hcf	\$1.80-\$3.44	\$2.06-\$3.50	\$2.20-\$3.93
Industrial categories per hcf	\$0.01-\$4.89	\$0.02-\$3.46	\$0.02-\$3.91
Institutional categories per hcf	\$1.93-\$2.30	\$2.13-\$2.75	\$2.29-\$2.91
Fixed charges			
Non-Residential bimonthly	\$8.48	\$9.24	\$10.08

Recommendation:

1. Close the public hearing for water, recycled water, and sewer rates adjustments.
2. Waive reading beyond the titles.
3. Introduce Ordinance No. 120.43 setting Water Service and Ordinance No. 208.40 setting Sewer Service.

2. Approve Entertainment Event Permit for a Carnival Sponsored by the Milpitas Rotary Mervyn's Parking Lot at the Milpitas Town Center: May 12-15, 2005 (Staff Contact: Donna Biles, 586-3003)

Background: The Milpitas Rotary Club has submitted an application for an Entertainment Event Permit to hold a Butler Amusement Carnival in the Mervyn's parking lot at the Milpitas Town Center from May 12-15, 2005. The Carnival would operate Thursday and Friday, May 12 and 13, from 3:00 p.m. until 11:00 p.m. and Saturday and Sunday, May 14 and 15, from 11:00 a.m. until 11:00 p.m.

The Rotary Club is also requesting waiver of City fees for Fire standby personnel. A memo from the Fire Marshal is included in the Council's agenda packets and addresses the issue of standby personnel. The Fire Marshal has determined that based upon experience with past events and the additional security personnel and measures provided by the Rotary Club, the need for Fire Watch personnel is not necessary.

The application has been reviewed and approved, subject to conditions, by the various City departments and the public hearing has been advertised as required by City Ordinance. A copy of the application is included in the Council's agenda packets.

Recommendation:

1. Close the public hearing.
2. Approve the Entertainment Event Permit for the Milpitas Rotary Club for a Carnival on May 12-15, 2005, at the Mervyn's parking lot at Milpitas Town Center, subject to the special conditions note.

XV. UNFINISHED BUSINESS

3. Review and Approve Ethics Project Final Report, Recommendations and Activities for 2005 and 2006 (Staff Contact: Tambri Heyden, 586-3280)

Background: At the April 19, 2005, City Council meeting, the Council voted to further discuss and take action on this agenda item at their May 3, 2005 meeting.

The final deliverable under the Ethics Project contract with Dr. Shanks is preparation of a final report that summarizes the first year of the project, assesses its success and makes recommendations for improvements. This final report, titled ""Sustaining *Ethics First!*: A Three-Year Plan for Leadership and Public Trust", dated February 22, 2005, is included in the Council's agenda materials. The report has been edited by the City's project manager for format and typographical errors only and as with past major deliverables, has been reviewed by the Ethics Steering Committee and the Community Advisory Commission.

The report contains seven recommendations and three goals for building leadership and public trust over the next two years. The seven recommendations are as follows:

1. Extend the time the Council spends sharing its decision reasoning with citizens, utilizing the pocket card. (The pocket card was distributed at the first Council training session.)
2. Hold an additional training session for the Commissioners who did not attend one of the training sessions and every effort should be made to gain signatures from 100% of the Council, Commissioners and senior staff who have not signed the Code of Ethics.
3. Take advantage of the Ethics Consultant's pro bono offer to design and/or facilitate the next two Council meeting moments of reflection.
4. Direct the City Attorney to add language to the new Open Government Ordinance to strengthen the lobbyist section.
5. Establish a permanent oversight committee to guide the Ethics Program. The committee should be comprised of six Community Advisory Commission members and three staff members – the Director of Planning and Neighborhood Services, the Human Resources Director and the Information Technology Director. Further, the Program should be resumed this current year.
6. Give the Lead Ethics Evaluator staff support, besides the current assistance from the City Clerk, such as from the Assistant City Attorney, to attend the ethics hearings and assemble non-partisan background pieces and statements of fact. Empower and remunerate the Lead Evaluator to work with parties involved in a complaint to see if a fair resolution can be reached without having to conduct a hearing.
7. Adopt the Ethics Project Final Report and activities recommended for 2005 and 2006 related to three goals presented to the Council last summer. The goals and associated activities are as follows:

GOAL 1 – Make the Code practical and useful for public officials who are expected to follow it.

2005 ACTIVITIES: a) The Council, Commissioners and senior staff should have three programmatic contacts, one a quarter, two of which would be workshops, the third would be decided by the oversight committee using the City's website for ideas. b) A skills assessment would be conducted prior to the first contact and an evaluation performed at the end of each contact.

2006 ACTIVITIES: a) Hold a Council workshop to building public trust as Council members during an election, b) hold a Candidates workshop, c) assist the League of Women Voters in a Final Word Forum, d) conduct a post-election assessment town hall meeting, and e) make consultant available for guidance to candidates.

GOAL 2 – Make the Code an integral part of the organizational culture, style, and business of the City.

2005 ACTIVITIES: a) Plan a process to build a culture of recognition beginning with the Commissioner recognition dinner. b) Implement the Community Partners Program using the forms developed in 2004. c) Revise the ethics website to make it easier to use and to share ideas and problems. d) Make ethics coaching available to Council members who request it.

2006 ACTIVITIES: a) Engage the Council, Commissioners and senior staff in identifying stumbling blocks and developing skills to overcome them. b) Assess whether the Ethics Code needs updating. c) The City Manager should participate with the oversight committee in plan the programmatic contacts for senior staff referenced in Goal 1, 2005 Activities.

GOAL 3 – Make the Code real in the lived experiences of Milpitas residents.

2005 ACTIVITIES: a) Conduct quarterly ethics program awareness communication to residents. b) Gain assistance and ethics program goals commitment from political consultants, employee unions, newspapers, and the South Bay Labor Council.

2006 ACTIVITIES: a) Plan a full scale public information campaign designed to give voters the skills they need to recognize ethical campaign candidates.

Recommendation: With respect to the recommendation to establish a permanent oversight committee, the oversight committee that has been in place for year one of the Ethics Project is the Ethics Steering Committee which is comprised of three CAC members appointed by the CAC – Craig Ranker, Jenifer Lind, and Joselito Abelardo and five staff members appointed by the City Manager – Tambri Heyden (project manager and Acting Planning and Neighborhood Services Director), Bill Weisgerber (Fire Chief), Mike McNeely (former City Engineer), Bill Marion (Information Technology Director) and Cherie Rosenquist (Human Resources Director) with legal support provided by Assistant City Attorney John Bakker. Both the Steering Committee and the CAC recommend that CAC representatives be appointed by the CAC and staff representatives be appointed by the City Manager, rather specifically designated by name or position. With this caveat, the CAC and Steering Committee recommend the Council approve Dr. Shanks' final report, recommendations and activities for 2005 and 2006.

4. **Introduce Ordinance No. 54.24 Amending Section 5.05 of Chapter 20 of Title I and Section 13.08 of Chapter 210 of Title V of the Milpitas Municipal Code to provide that notices of appeal to the City Council shall only be effective upon timely receipt of payment of the fee adopted or amended by resolution of the City Council and to provide for appeals of the Animal Regulation Administrator's decisions to be heard**

by the City Council. (Staff contact: Tambri Heyden, 586-3280 and Peter Spoerl, 586-3040)

Background: The City's Animal Regulation Ordinance, adopted in 1995, provides the ability for violators to request a hearing conducted by the Animal Hearing Officer. As per the ordinance, decisions by the Officer, currently a staff member of the Housing Division, resulting from the administrative hearing can be appealed to an appeal board, made up of one or more persons, to be established by City Council resolution. Such an appeal board has never been formed and no one has formally submitted this type of written appeal. At the April 19, 2005 Council meeting, the Council directed staff to revise proposed Ordinance No. 54.24 to provide for appeals of the administrative officer's decision to be heard by the City Council. The ordinance has been revised accordingly for re-introduction.

In addition, this issue has brought to light an outdated section of the City's Municipal Code Standard Procedures Chapter 20 governing all types of appeals. By Resolution No. 6449, dated July 18, 1995, the City Council adopted a comprehensive master fee schedule for all City fees and charges in order to recover the costs incurred by the City. This resolution raised the then-existing fee for appeals of administrative decisions to the City Council from \$25 to \$100. Section 5.05 of Chapter 20, however, still references the old fee of \$25, providing that a notice of appeal to the City Council shall not be effective unless a notice of appeal is filed and, where required, "said \$25 fee" paid within the time required. For the sake of internal consistency, the proposed ordinance would amend this section to provide that a notice of appeal requires payment of the fee adopted or amended by resolution of the City Council.

Recommendation:

1. Waive reading of Ordinance No. 54.24 beyond the title.
2. Introduce Ordinance No. 54.24.

5. Support BART At-Grade Option at Dixon Landing Road (Dixon Under BART and the Railroad): BART Extension to San Jose, Project No. 8164 (Staff Contact: Greg Armendariz, 586-3317)

Background: At the May 4, 2004 meeting, Council approved the comment letter to the Valley Transportation Agency (VTA) for the Draft EIS/EIR BART Extension to San Jose, Milpitas, and Santa Clara. In that letter, Milpitas strongly opposed the Aerial option for the BART crossing at Dixon Landing Road. In response, VTA adopted a retained cut concept (Bart under Dixon) as the preferred option and also agreed to further research an At-Grade option that would align Dixon Landing Road under BART and the railroad.

The At-Grade option has significant advantages including: increased safety, elimination of traffic congestion when trains are present, and the reduction of train horn noises. However, it also presents several challenges including: closure of Dixon for up to 6-9 months, the need for a storm drain pump station to be maintained by Milpitas, and the elimination of two driveways on Dixon Landing Road just west of the railroad.

In the last few months, staff has conducted several meetings with the VTA to discuss the pros and cons of the options and a community meeting was held. Verbal and written comments were received, the majority of which preferred the At-Grade option. The options and results of the community meetings were presented to the Transportation Subcommittee. The Subcommittee agreed with staff's recommendation that City support the At-Grade option subject to VTA providing the following:

- Financing of an endowment for the City's storm drain operation and maintenance costs;
- Adequate sidewalk widths on Dixon Landing Road under BART and the railroad;
- Adequately provide for additional fire suppression resources, west of the railroad during the period that emergency access cannot be provided through the construction site.
- Adequate replacement of all affected fire suppression systems, fire department vehicle accessible driveways and routes serving adjacent properties.

Recommendation: Support BART At-Grade crossing at Dixon Landing Road subject to VTA providing:

1. Financing of an endowment for the City's storm drain operation and maintenance costs;
2. Adequate sidewalk widths on Dixon Landing Road under Bart and the railroad;
3. Adequately provide for additional fire suppression resources, west of the railroad during the period that emergency access cannot be provided through the construction site.
4. Adequate replacement of all affected fire suppression systems, fire department vehicle access driveways and routes serving adjacent properties.

XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes (April 19, 2005)

RA4. Approval of Agenda and Consent Calendar

RA5. Receive Progress Report on Library Design (Project No. 8162) (Staff Contact: Mark Rogge 586-3403)

Background: The schematic design phase for the new library project has been completed, and was approved by the Council at the meeting of April 5, 2005. The architect has now begun the design development phase. The project is included in the Capital Improvement Program, and staff will provide a brief presentation on the progress of the design at the Joint Redevelopment Agency and City Council Meeting.

Recommendation: Note receipt and file the progress report on the library design.

RA6. City of Milpitas Financial Status Report For The Nine Months Ended March 31, 2005 (Staff Contact: Emma Karlen, 586-3145)

Background: The Finance Department will present a review of the City's financial status for the nine months ended March 31, 2005.

Recommendation: Receive staff report.

***RA7. City of Milpitas Investment Portfolio Status Report for the Quarter Ended March 31, 2005 (Staff Contact: Emma Karlen, 586-3145)**

Background: In compliance with the State of California Government Code and the City's Investment policy, the City of Milpitas Investment Report for the quarter ended March 31, 2005 is submitted for your review and acceptance.

The Portfolio Summary Report included in the Council's packet provides a summary of the City's investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity and the equivalent yields for each type of investment. The Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of March 31, 2005.

As of March 31, 2005, the principal cost and market value of the City's investment portfolio was \$245,177,768.42 and \$243,378,979.16 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If the investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal.

The City's effective rate of return for the period ended March 31, 2005 was 2.80%. The comparative benchmarks for the same period were 2.29% for LAIF (Local Agency Investment Fund) and 2.70% for the average 2 year Treasury Note. Excluding the long-term GNMA securities and Repurchase Investment Agreement, the weighted average maturity of the portfolio was 531 days.

The investment portfolio is in compliance with the City's investment policy. A combination of securities maturing, new revenues, and tax receipts will adequately cover the anticipated cash flow needs for the next six months. Cash flow requirements are continually monitored and are considered paramount in the selection of maturity dates of securities.

Recommendation: It is recommended that the City Council/Agency Board note, receipt, and file the investment report for the quarter ended March 31, 2005.

RA8. Agency Adjournment

XVII. REPORTS OF OFFICERS AND BOARDS

Community Advisory Commission

6. Receive Community Advisory Commission (CAC) Report on Having Non-Denominational Invocations At City Council Meetings (Staff Contact: Dennis Carrington, 586-3275)

Background: At its April 19, 2005, meeting the City Council continued this report by the CAC on having non-denominational invocations at City Council meetings to its meeting of May 3, 2005.

At its December 21, 2004, meeting the City Council considered having a short non-denominational invocation at City Council meetings. The Council directed that the CAC add to its short-term work plan the potential of having a short non-denominational invocation prior to the start of City Council meetings and to solicit feedback from the community, look at policies in other cities, and report back to the Council.

At its January 5, 2005, meeting, the CAC discussed this task and directed staff to look at the policies of other cities and report back to the Commission in April or May. Staff contacted several cities in Santa Clara County and the region. In summary, the Cities of Gilroy, Morgan Hill, San Jose and Santa Clara have invocations. The Cities of Campbell, Cupertino, Fremont, Mountain View, Palo Alto, Los Altos, Los Altos Hills, Saratoga and Sunnyvale do not have invocations.

Gilroy. Pastors are invited to give invocations. They must conform to the requirements of the case of Rubin v. City of Burbank that held that city council meetings may not begin with a sectarian prayer. Gilroy provided a copy of its invocation instructions, an invocation schedule and a letter sent to pastors informing them of the schedule (attached).

Morgan Hill. There is a silent invocation by the Mayor. Morgan Hill has no prayer or invitation to churches to provide invocations.

San Jose. Each council member is responsible for invocations for a month. There is no policy on the content of the invocation. For example it could be a prayer, skit or choir. There is no requirement that an invocation be non-denominational.

Santa Clara. There is a prayer at the beginning of every city council meeting as follows:

OH HEAVENLY FATHER ON HIGH.
WE HUMBLY SEEK THY BLESSINGS UPON THIS MEETING.
GRANT US STRENGTH, COURAGE, AND WILL TO PERFORM OUR
OBLIGATIONS AND DUTIES TO OUR PEOPLE WITH JUSTICE TO ALL.
GRANT US WISDOM SO THAT WE MAY ACT WISELY AND
FOR THE BEST INTERESTS OF OUR PEOPLE, OUR NEIGHBORS AND
OUR COUNTRY.
ALL THIS WE ASK IN THY NAME, WHO REIGNS,
THE WORLD WITHOUT END
AMEN

On February 2, 2005, after staff presented the research of other cities' policies, the CAC directed staff to get feedback from the other City commissions and report back at the April 6, 2005, CAC meeting. Staff sent e-mails to all members of City commissions asking:

1. Are you are in favor of having a short invocation at the beginning of City Council meetings or,
2. If you are opposed, are you in favor of a silent invocation where a minute would be reserved for all to pray or meditate in silence?

Staff received 36 responses as follows:

NON-DENOMINATIONAL INVOCATION SURVEY			
OPTION	In favor of short invocation	In favor of silent invocation	Opposed to any invocation
Arts Commission	2		2
Bicycle Transportation Advisory Commission	1		
Citizens Emergency Preparedness Advisory			1

Commission			
Community Advisory Commission		1	3
Economic Development Commission	4		
Library Advisory Commission	1	2	1
Parks, Recreation, and Cultural Resources Commission		1	1
Planning Commission	1	1	1
Recycling and Source Reduction Advisory Commission	1		
Senior Advisory Commission	5		
Sister Cities Commission	2	1	2
Telecommunications Commission	2		
Youth Advisory Commission			
TOTAL	19 (53%)	6 (17%)	11 (30%)

CAC action. The CAC noted that of 118 sitting members of city commissions (129 total (including alternates) with 11 vacancies) only 36 commissioners (31%) responded to the survey. Nineteen commissioners were in favor of a non-denominational invocation at the beginning of City Council meetings, six were in favor of a silent invocation and eleven were opposed to either a non-denominational invocation or a silent invocation. The CAC unanimously directed that staff prepare a report to the City Council on their study of non-denominational invocations.

Memorandum from City Attorney. The City Attorney has prepared a memorandum (attached to the Council's agenda materials) regarding the legality of invocations as part of public meetings such as the City Council meeting. The Supreme Court in its Marsh v. Chambers decision held that a short non-denominational invocation did not violate the Constitution. The prayer must not be a "proselytizing activity" or "symbolically place the government's official seal of approval on one religious view." Therefore, a short, non-denominational invocation may be given prior the start of the City Council meeting so long as it satisfies the constitutional requirement that it not be used to advance one faith or belief over another. Persons invited to give an invocation should be clearly informed that the invocation should be short, non-denominational, and should not be used to proselytize or to advance or disparage any particular religious viewpoint.

Recommendation: Receive the CAC's report, and determine City Council policy on non-denominational invocations at City Council meetings.

XVIII. NEW BUSINESS

7. Actuarial Valuation Report of the City's Postretirement Medical and Dental Benefits Plans (Staff Contact: Emma Karlen, 586-3145)

Background: In December 2004, the City Council approved an agreement with Nicolay Consulting Group to perform an actuarial valuation on retiree Medical and Dental Benefits Plans. The actuarial valuation is necessary primarily to anticipate and comply with the requirements of the Government Accounting Standards Board Statement No. 45 - Accounting and Financial Reporting by Employers for Postemployment Benefits other than Pensions (GASB 45). This new statement will apply to all the state and local governments that provide benefits to retirees including medical, dental, and other health-related benefits through a defined benefit plan.

Similar to most cities and local agencies, City of Milpitas funds the retiree medical benefits using the pay-as-you-go approach. Currently, staff estimates the obligated amount of medical and dental benefits that the City has to fund based on the number of

retirees and then appropriates the amount in the annual budget. GASB 45 requires the city to accrue the amount of funding required while the employees are still active employees, not after they retire. This principal is similar to pension funding, i.e., the City starts funding the pension obligation while the employees are still working, not after they retire.

Because most cities do not pre-fund retiree medical benefits, the unfunded liability is significant. For the City of Milpitas, the actuary calculates our unfunded liability to be approximately \$49.3 million as of July 1, 2005. GASB 45 allows the City to amortize the unfunded actuarial liability over 30 years. If we were to start pre-funding in FY 05-06, the required amount of funding would be approximately \$4.9 million. Expressed as a percentage of the annual payroll, the normal cost is about 5.3% and the catch up percentage is approximately 7.2%. The combined total is approximately 12.5% of annual payroll in FY 05-06.

GASB 45 does not mandate that the City change its pay-as-you-go funding approach, however, upon adoption of this new Standard, the City must recognize and fully disclose the amount of annual required contribution, funding progress and the contribution deficiency (or excess). If the City decides to pre-fund some or the entire obligation, the pre-funded amount must be irrevocably transferred to a trust that is legally protected from creditors. Earmarking or designating the fund balance does not constitute contributions.

Since the City is required to implement GASB 45 no later than FY 07-08, there is still sufficient time to consider whether the City should change its funding approach. One of the reasons why the City should consider changing is that given the magnitude of the unfunded liability, the sooner the City starts pre-funding, the sooner the City can earn investment income on the assets. Staff will conduct further research and report back to the City Council the advantages and disadvantages of either funding approach.

Recommendation: Accept the actuarial valuation report of the City's postretirement medical and dental benefits plan.

***8. Approve Letter of Support for AB 1590 Regarding Property Tax Revenue Allocations for Special Districts (Staff Contact: Darryl Wong, 586-3345)**

Background: The City of Milpitas has been charged higher wholesale water rates due to state assessments imposed on Santa Clara Valley Water District (District). A technical flaw in the state legislation that authorized the assessment has resulted in agencies such as the District that have both water and storm control functions to be assessed at a higher rate than if the two functions were separate. Assembly Bill (AB) 1590 (Lieber and Cohn) has been introduced to correct the flaw. The legislation will result in reducing the District's assessment from \$25.5 million to \$7.2 million next year. This reduction would lower projected wholesale rates to cities such as Milpitas and restore vital flood protection programs that were dropped within the County. Staff recommends supporting the proposed state legislation, and approval of a letter of support for AB 1590. A copy of AB 1590 and letter of support are included in the Council packets.

Recommendation: Approve letter of Support for AB 1590, to State Assembly Members Torrico and Lieber, and to State Senator Figueroa.

***9. Approve a Budget Appropriation: Minor Traffic Projects, Project No. 4024 (Staff Contact: Jaime O. Rodriguez, 586-3335)**

Background: The Capital Improvement Project, Minor Traffic Projects, (CP4024), provides funding for unanticipated traffic studies and improvements in response to community and City Council requests for traffic safety investigations and pro-active measures identified by staff. Typical studies include undulator studies and sign requests such as stop or speed limit signs. This year's funding allocation has been expended as a result of the installation of eight (8) undulators within the Pines Neighborhood, addressing an increase in the amount of pro-active work orders from the Traffic Engineering Division to the Department of Public Works for sign installations as a result of a one year vacancy in the Traffic Engineer position and a backlog in pending community requests.

An appropriation of \$50,000 is recommended to allow staff to continue respond to customer service requests from residents and City Council for traffic safety studies and improvements and for pro-active measures identified by staff. Sufficient funding is available from the Street Fund

Recommendation: Approve Budget Appropriation of \$50,000 from the Street Fund into Minor Traffic Projects, Project No. 4024.

XIX. ORDINANCES (None)

XX. RESOLUTIONS

- *10. Adopt Resolution Granting Initial Acceptance: Project Hillside Water System Improvement Project, Project No. 7083, (Staff Contact Greg Armendariz, 586-3317)**

Background: This project provided replacement booster pumps, furnishing and installing new calcium hypochlorite chlorination systems, electrical and control improvements, and miscellaneous improvements to two booster pump stations and two reservoir sites in the Hillside Water System. The City Council awarded the project to Blocka Construction, Inc. on April 9, 2003. The project has been successfully completed, and staff recommends adoption of a resolution granting an initial acceptance and authorize the reduction of the contractor's faithful performance bond to 10% of the contract amount or \$ 159,188.36.

Recommendation: Adopt a resolution granting initial acceptance of the project subject to the usual one-year warranty period and reduction of the faithful performance bond to \$159,188.36.

- *11. Adopt Resolution Authorizing Staff to Submit a Grant Proposal to the TDA Article 3 – Bicycle and Pedestrian Grant Program for the Installation of ADA Ramps at Various School Locations (Staff Contact: Jaime O. Rodriguez, 586-3335)**

Background: The Transportation Development Act (TDA) provides guaranteed funding to local agencies based on population size for various types of transportation projects each year. This year, TDA allows agencies to use their funding for Bicycle and Pedestrian related projects. The City of Milpitas' guaranteed funding distribution is \$47,112.

Staff is recommending that this year's funding be used to install ADA compliant pedestrian ramps around elementary schools. The State Department of Transportation, Caltrans, recently adopted new ADA pedestrian ramp guidelines that require the use of high-visibility tactile landing areas. These are the types of ramps proposed for this project.

A resolution authorizing the staff to submit a grant proposal for the use of the funding for the installation of ADA pedestrian ramps is required.

Recommendation: Adopt resolution authorizing staff to submit a grant proposal to the TDA Article 3 – Bicycle and Pedestrian Grant Program for the Installation of ADA Ramps at Various School Locations.

XXI. BIDS AND CONTRACTS

*12. Award Bid to East Bay Motorsports for Purchase of a Honda ST1300P Police Motorcycle (Staff Contact: Chris Schroeder, 586-3161)

Background: The Police Department needs to purchase a motorcycle to replace one that was totaled in an accident. In researching the replacement motorcycle, staff learned that Kawasaki was no longer manufacturing police motorcycles. The selection options were therefore limited to (3) manufacturers that law enforcement agencies use for motorcycle traffic enforcement - BMW, Harley Davidson and Honda. A study of the (3) alternatives was conducted by the Police Traffic Unit, and the Honda ST1300P was determined to be the most suitable. Staff solicited quotes from four vendors. The results are as follows:

Honda Motorcycles	No Bid
Honda Peninsula	No Bid
Roseville Cycle, Inc.	Rejected
East Bay Motorsports	\$14,742.00

Roseville Cycle, Inc. originally bid \$11,800.00, but during analysis of the bids it was discovered that they had made a material error and bid the wrong motorcycle. Although we could not accept a correction after the fact, staff did receive an unofficial quote of \$15,375.00 which would not have been competitive. Staff recommends that Council award the purchase to East Bay Motorsports. In addition staff requests that Council approve an additional appropriation of \$4,958.00 for a total of \$19,700.00, to cover the purchase and installation of the emergency lighting and siren equipment. The appropriation will be funded by the Equipment Replacement Fund.

Recommendation: Award the bid to East Bay Motorsports for the purchase of a Honda ST1300P police motorcycle, and approve the appropriation of \$19,700 from the Equipment Replacement Fund.

*13. Approve Agreement With Operator Certification Training, Inc. For Advanced Water Supply Certification Training (Staff Contact: Stephan Smith, 586-2640)

Background: In order to meet state mandated water supply operator certification requirements staff recommends that the City engage the services of Operator Certification Training, Inc. (OCT) to provide training to City of Milpitas Utility employees. The training, over the period August 30 to October 13, comprises 12 classes in Advanced Water Supply Principals and includes training for Management as well as Grade 4 and 5 Operators. OCT will provide all workbooks, instructional materials and supplies. The City will supply the classroom. (Funds for this service are available in the Public Works Department Utilities Operating Budget.)

Recommendation: Approve the agreement with Operator Certification Training, Inc. subject to approval as to form by the City Attorney, and authorize the expenditure in the amount not to exceed \$22,500.00.

***14. Approve Plans and Specifications and Authorize the Advertisement for Bids: Berryessa Pump Station, Project No. 8138 (Staff Contact: Doug De Vries, 586-3313)**

Background: This project is part of the approved five-year Capital Improvement Program (CIP). The Berryessa Storm Pump Station is located at Hidden Lake Park and provides drainage for portions of the City bounded by Calaveras Blvd. (on the south), Wrigley Creek (on the west), Jacklin Rd. (on the north), and Hwy. 680 (on the east). This project provides replacement of three diesel engines and engine and station controls and electrical systems at the Berryessa Storm Pump Station. This pump station is 24 years old and needs to be rehabilitated. The three engines have exceeded their design (or useful) life. This project includes replacement of the existing 7.5 HP with a 50 HP jockey pump to efficiently pump low flows during dry weather with an electric variable speed jockey pump rather than the large pumps that are more costly to operate. Work also includes replacing the existing roof, painting the station, installation of flap-gates on creek discharge pipes and retrofitting of vent pipes per the Storm Drain Master Plan.

Plans and specifications for the pre-purchases of equipment of the subject project have been completed. This equipment package will include: 50 HP jockey pump, three 185 HP diesel engines, three right angle drives, three 20,000 GPM vertical turbine pumps and minor accessories to make the system operational. The additional improvements such as replacing the existing roof, painting the station, and retrofitting of vent pipes will be addressed as part of the construction project which will commence later this year.

The Engineers estimate for this equipment package is approximately \$300,000.00. An additional budget appropriation will be needed to award the package, which will be requested at the time of award. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review at the Office of the City Engineer.

Recommendation:

1. Approve plans and specifications
2. Authorize advertising for bid proposals.

XXII. CLAIMS AND DEMANDS

***15. Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Chris Schroeder, 586-3161)**

Background: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$5,196.00 to Fit-Tech Services for the annual preventative maintenance service agreement for the exercise equipment at the Sports Center. Fit-Tech has been providing the weekly maintenance service since the center opened in 2001. It is very difficult to find a company to service equipment they did not sell. Quoted fees received from the only other local service company were prohibitively high. Staff recommends continuing the agreement with Fit-Tech. (Funds are available from the Recreation Services Operating Budget for these services).

2. \$17,500.00 to South Paw Prep for youth summer basketball camp. For the past 6 years the City has used Steve Cain, who created the program for the City, and Ralph Fields, as the City's contract staff to run both our summer Basketball Camp and fall Youth Basketball Camp. This year Ralph Fields has taken over these camps under his company's name - South Paw Prep. As a result all payments under this contract will be made to South Paw Prep. (Funds are available from the Recreation Services Operating Budget for these services).

Recommendation: Approve the purchase requests.

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MAY 17, 2005, AT 7:00 P.M.**